

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

IN RE: HENRY BOYD, JR., PLAINTIFF/APPELLANT,
VERSUS CIVIL CAUSE NO. 3:94CV189-S
UNITED STATES OF AMERICA,
and LOCKE D. BARKLEY,
CHAPTER 13 TRUSTEE, DEFENDANT/APPELLEES.

MEMORANDUM OPINION AFFIRMING BANKRUPTCY COURT

This cause of action is before the court on the appeal of several orders of the Honorable David W. Houston, III, United States Bankruptcy Judge for the Northern District of Mississippi. The defendants have filed a motion to dismiss based on the doctrine of res judicata.

A. Facts

In conjunction with a loan received from Farmers Home Administration (hereinafter referred to as "FmHA"), Henry Boyd, Jr. (hereinafter referred to as "debtor"), executed a promissory note in 1977, wherein he agreed to repay the principal and interest to FmHA through monthly installments of \$155.00. As security for the note, the debtor executed a deed of trust in favor of FmHA on his residential real property located in Marshall County, Mississippi. The debtor subsequently defaulted under the promissory note. FmHA accelerated the debt and made demand for payment, notice of which was received by the debtor in September, 1985. On March 10, 1986, a foreclosure sale was conducted where FmHA was the sole bidder.

The trustee's deed granting title to FmHA was filed for record with the Chancery Clerk of Marshall County on March 19, 1986.

Subsequent to the completion of the foreclosure, the debtor filed a complaint to set aside the foreclosure in the United States District Court for the Northern District of Mississippi. A counterclaim for eviction was pled by FmHA. On December 29, 1986, a default judgment on the counterclaim was entered against the debtor. Conditioned on the debtor continuing to make monthly rental and interest payments, the default judgment was set aside by a separate order of the District Court on January 6, 1987.

In December, 1987, pursuant to a motion for summary judgment, an order was entered which dismissed FmHA from the case, and, except for a Constitutional Fifth Amendment due process claim, dismissed all counts of the complaint. The suit continued against certain named FmHA officials in their individual capacities and on the eviction counterclaim. The case came to a conclusion in April, 1988, when an order was entered dismissing the remaining claims of the complaint and granting judgment in favor of FmHA on its counterclaim for eviction. The debtor appealed the decision of the District Court to the United States Court of Appeals for the Fifth Circuit. By judgment dated November 30, 1988, the Fifth Circuit affirmed the order of the District Court.

The debtor filed a chapter 13 bankruptcy petition and plan on December 16, 1988, listing FmHA as the only creditor. The plan provided for mortgage payments of \$155.00 per month to FmHA as well as \$80.34 per month to cure the pre-petition arrearage of \$1337.00.

Notice of the filing of the petition was mailed to FmHA advising that the meeting of creditors would be held on January 24, 1989, and that the bar date for objection to confirmation of the plan was February 10, 1989. No objection or claim was made by FmHA as to the proposed plan. The bankruptcy court confirmed the plan on February 24, 1989.

On February 27, 1989, FmHA filed a motion requesting relief from the automatic stay to collect rent. FmHA filed a complaint on June 26, 1989, to recover money and property. On September 8, 1989, the bankruptcy court granted FmHA's motion for relief from the automatic stay. In re Boyd, 107 B.R. 541 (Bkrtcy. N.D. Miss. 1989). The next day the debtor was evicted from the subject property. The debtor appealed several of the Bankruptcy Court's orders. This court issued a memorandum opinion and order affirming the bankruptcy court. In Re: Henry Boyd, Jr. v. Aaron R. Goolsby, et al., No. WC-90-103-S (N.D. Miss. May 6, 1993). On appeal to the United States Court of Appeals for the Fifth Circuit, this court's conclusion was affirmed. Matter of Boyd, 11 F.3d 59 (5th Cir. 1994). The Supreme Court of the United States of America denied certiorari. Boyd v. Goolsby, 114 S.Ct. 2103 (May 23, 1994).

The debtor then filed a series of convoluted motions with the Bankruptcy Court for the Northern District of Mississippi. The motions were attempts to relitigate the foreclosure of the debtor's home and the subsequent ministerial confirmation of the debtor's chapter 13 bankruptcy petition. The Bankruptcy Court found the

debtor's motions to be barred by the doctrine of res judicata. The debtor has appealed those orders to this court.

B. Jurisdiction and Standard of Review

Pursuant to 28 U.S.C. § 158(a), this court sits as an appellate court for the United States Bankruptcy Court for the Northern District of Mississippi. Findings of fact are reviewed under the clearly erroneous standard. See Bankruptcy Rule 8013. "[The District Court] may review freely [the Bankruptcy] court's conclusions of law." Matter of Waller Creek, LTD., 867 F.2d 228, 232 (5th Cir. 1989). Questions of law are reviewed de novo.

C. Discussion

The debtor has stated the following issues are appropriately before the court for appellate review:

1. Whether the District Court retained any Jurisdiction to review this appeal, where the creditor (FmHA) and the Trustee failed to file an appeal from the Bankruptcy Court order of Feb. 24, 1989, confirming the debtor's Chapter 13 plan.
2. Did the Bankruptcy Court have any jurisdiction to change the order of confirmation after the plan was confirmed and deny the plaintiff his exemption where neither the creditor or Trustee appealed from the other confirmation pursuant to Rule 8002(a).
3. Did the Bankruptcy Judge err in sustaining the Trustee's Motion for Direction where the creditor did not object to the confirmed plan or appeal from the order confirming it.
4. Whether the claim property as exempt by the debtor in his chapter 13 plan and the acquiescence thereto by the creditor to such claim or exemption, reinvested the property in the debtor upon confirmation of the debtor's Chapter 13 plan.

This court is very familiar with the saga of Mr. Henry Boyd, Jr., and his house. The debtor had no interest in the property

when he filed the Chapter 13 petition. Simply because FmHA failed to file an objection to the chapter 13 plan which was confirmed by the Bankruptcy Court, the debtor was not reinvested with an interest in the property that had been foreclosed. This was the conclusion of the Bankruptcy Court, this District Court, and the Fifth Circuit.

Application of the doctrine of res judicata requires proof of the following:

(1) the parties must be identical in the two actions; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same cause of action must be involved in both cases.

Eubanks v. F.D.I.C., 977 F.2d 166, 169 (5th Cir. 1992). The Supreme Court of the United States in Nevada v. United States, 463 U.S. 110 (1983), stated:

Simply put, the doctrine of res judicata provides that when a final judgment has been entered on the merits of a case, '[it] is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' Cromwell v. County of Sac., 94 U.S. 351 (1877). The final 'judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever.'

Commissioner v. Sunnen, 333 U.S. 591, 597 (1948).

These same parties, or parties with identical interests, and this identical cause of action have already been reviewed by the court. The debtor's issues on appeal have previously been addressed by a court of competent jurisdiction. It has been

settled. The proceedings sub judice satisfy the four part test for the doctrine of res judicata.

The debtor is proceeding pro se, but that does not immune him from sanctions. This is the court's last warning. Any other proceedings in the Bankruptcy Court or this District Court concerning the dismissed chapter 13 petition and the foreclosed home formerly owned by the debtor will result in sanctions.

An order in accordance with this opinion shall issue.

This the _____ day of October, 1995.

CHIEF JUDGE